IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 5997/1999

DHANRAJ JAITHALIA Vs. STATE OF RAJ. & ORS.

DATE: 29.11.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Alok Sharma for the petitioner.
Mr. B.S. Chhaba, Dy. GA for the State.
Mr. S.L. Kumawat for
Mr. V.D. Gathala for the respondents.

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The case of the petitioner is that he has purchased a plot No. 4(A) in Lecturers Colony, Nagar Palika Ward No. 21 situated at Yagya Bhawan Road, Behind Giriraj Bhawan in Madanganj, Kishangarh from one Smt. Ugam Kanwar W/o Shri S.N. Mathur through registered sale deed dated 22.08.1984. After purchasing the said plot, the petitioner applied for permission to raise construction thereon and the same was granted by the Nagar Palika, Kishangarh vide order dated 15.12.1984, but the petitioner could not raise construction on the said plot and during the period the petitioner was posted at Abu Road, the Police Training School, Kishangarh has encroached over the land belonging to the Nagar Palika including the plot of the

petitioner. Knowing this fact, the petitioner represented before the Nagar Palika through various representations dated 13.12.93, 10.08.94, 29.07.95 and 06.11.95.

The Deputy Secretary, Home (Group-II) Department, Govt. of Rajasthan addressed a letter dated 12.10.95 to the Commissioner, Nagar Palika, Kishangarh on the subject of encroachments made by the Police Training School on Khasra No. 676 (old)/1140-1 (new). It was stated that a meeting was held in the Home Department on 13.09.93 wherein the then Chairman and Commissioner of Kishangarh Nagar Palika, the Commandant, Police Training School, Kishangarh and the Sub Divisional Magistrate, Kishangarh had participated. As Khasra No. 676 (old) was being used by the Police Department, it was proposed that an alternate government land be identified by the Collector for allotting the same to the Police Training School. In response to this, the Sub Divisional Magistrate, Kishangarh vide his letter dated 14.07.95 informed that there was no government vacant land available near Police Training School.

The Collector, Ajmer had also written a letter to the Sub Divisional Officer, Kishangarh to remove the encroachment from the land in question which has been

made by the Police Training School. Vide Annexure-15 dated 15.10.99, the petitioner was also informed that the Government at its level is making efforts to initiate action to remove encroachment of Police Training School.

It was also informed by the office of the Collector, Ajmer to Deputy Secretary, Legal Aid vide letter dated 29.11.97 that after enquiry it was observed that allotment of alternative plot is the subject matter of Nagar Palika, Kishangarh. The Additional Divisional Commissioner, Ajmer vide his letter dated 07.08.96 directed the Superintendent of Police, Ajmer to remove encroachment and inform after removing the same.

Thus the letters written by the Collector, SDO as well as the Divisional Commissioner established one aspect that the Police Training School, Kishangarh has encroached over the land in question and this fact has been supported by the Nagar Palika, Kishangarh and as per the direction of this Court, the Executive Officer, Nagar Palika, Kishangarh has also filed an affidavit, wherein it is clearly stated that to setup the Lecturer Colony over the land bearing Khasra No. 876, the plots were sold through auction after sanctioning the plan of 38 plots from Deputy Town Planner in the year 1969-70.

At that time, only 8 plots were constructed by the bidders allotted to them and the land of remaining 27 plots were encroached by the Police Training School by putting wire fencing over the plots. Regarding present situation, it is also contended in the affidavit filed by the Executive Officer, Nagar Palika, Kishangarh that as per the inspection done by the Executive Officer, the plots numbering 25, 26, 27, 31, 32, 33, 34, 37 and 38 are in possession of the allottees and the plots numbering 1 to 12, 13 to 19, 28, 28, 30 and 36 are in possession of the Police Training School and the remaining plots numbering 20, 21, 22, 23 and 24 are partly in possession of the Police Training School and partly in possession of the allottees. Not only this but the Police Training School has encroached over the area which was earmarked for facilities.

No separate reply has been filed on behalf of the State and joint reply has been filed on behalf of the respondents.

Learned counsel appearing for the State without disputing the fact that the plots in question are encroached by the Police Training School, submits that the Government is considering the case of the allottees to allot alternative plots or to repay the amount back to the allottees along with the interest

and sought time to submit latest position in this regard, which has strongly been opposed by the counsel appearing for the petitioner.

In the reply filed on behalf of the respondents, it has been submitted that the State Government has taken decision vide letter dated 18.12.99 by which it has been decided that the allottees who were not given possession at the time of auction of the plots in the year 1970 should be asked to furnish affidavit in regard to the fact that they did not have any residential plot in the locality and such allottees may be adjusted by allotting another piece of land of the same size. It is further mentioned that plot No. 4(A) was allotted to Smt. Ugam Kanwar S/o Shri S.N. Mathur in the year 1970 and the possession of the said plot was immediately handed over to the original allottee.

Now the question arises for determination before this Court is that admittedly the petitioner is a bonafide purchaser of the plot No. 4(A) from the original allottee who purchased the plot in open auction made by the Nagar Palika, whether this plot has been encroached by the Police Training School or not?

The State agency itself has found that the Police Training School has made encroachment over the

land in question and to this effect, they have passed an order to remove the same and the letters written by the Collector, S.D.O., Additional Commissioner support the contention of the petitioner that encroachment is still not removed despite order passed by the State Government.

Considering the submissions advanced by the learned Govt. Advocate on behalf of the State that the respondent Nagar Palika has asked for submission of affidavit for allotment of alternative plot to the allottees, now the question remains with regard to direction as this writ petition involves several disputed question of facts and as observed herein above, the land in question has been encroached by the Police Training School, Kishangarh, Ajmer, the only alternate left is either the respondents remove the encroachment of the Police Training School from the land in question or to provide alternative plot of equivalent size and site to the petitioner as the petitioner redressing his grievance since 1984.

Therefore, this Court deem it proper to direct the respondents to remove encroachment and handover the possession of plot No. 4(A) to the petitioner or to allot alternative plot of equivalent size and site to the petitioner, but in any case, the aforesaid exercise

shall be undertaken by the respondents expeditiously but not later than six months from the date of receipt of certified copy of this order.

With these observations, the writ petition stands disposed of.

The stay application also stands disposed of.

(K.S. RATHORE),J.

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